

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 165 CS

Restricting Sheltering of Sexual Offenders and Predators

SPONSOR(S): Legg

TIED BILLS:

IDEN./SIM. BILLS: SB 638

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------------|----------------|----------------|
| 1) <u>Domestic Security Committee</u> | <u>9 Y, 0 N, w/CS</u> | <u>Wiggins</u> | <u>Newton</u> |
| 2) <u>Criminal Justice Committee</u> | <u></u> | <u></u> | <u></u> |
| 3) <u>Local Government Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u>Criminal Justice Appropriations Committee</u> | <u></u> | <u></u> | <u></u> |
| 5) <u>State Administration Council</u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

The bill prohibits sexual offenders and predators from taking shelter at a public hurricane evacuation shelter used by the general public. Each county shall provide sufficient separate and exclusive hurricane evacuation shelter space for sexual offenders and predators.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government-The bill requires counties to provide for sufficient separate and exclusive hurricane evacuation shelter space for sexual offenders and predators.

Empower families-The bill decreases the burdens of government on families or family decision making by eliminating the possibility of sexual offenders or sexual predators being housed in a public evacuation shelter.

Maintain public security-The bill increases the physical security of individuals being housed in a shelter by not allowing sexual predators or sexual offenders to stay in shelters provided for the public.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Sexual Predator Designation

To be designated as a predator, the person must have been found by the court to be a sexual predator as defined in s. 775.21, F.S. Florida law requires a written court finding for sexual predator status. Sexual predator designation only applies to sex offenses committed on or after October 1, 1993. In addition, the subject must have been convicted of either one first-degree felony sex crime, or two second degree felony sex crimes. In the latter situation, the second offense must occur within 10 years of the previous offense, conviction, or release from the sanction of the court, whichever is later. Additionally, as of July 1, 2004, anyone civilly committed under the Florida Jimmy Ryce Sexually Violent Predator Act must also register as a sexual predator.¹

Section 775.21(4)(a), F.S. provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator". Specifically a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first degree felony violation, or any attempt thereof, where the victim is a minor and the defendant is not the victim's parent of the following offenses:²
 - a. Kidnapping or false imprisonment, where the victim is a minor and the defendant is not the victim's parent³
 - b. Sexual battery,⁴
 - c. Lewd or lascivious offenses,⁵
 - d. Selling or buying a minor for child pornography,⁶ or
 - e. A violation of a similar law of another jurisdiction.⁷
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication of one of the following offenses:

¹ Florida Department of Law Enforcement's website, Frequently Asked Questions #1

² s. 775.21(4) (1)a F.S.

³ s.787.01 F.S, 787.02, F.S.

⁴ See chapter 794 F.S.

⁵ s. 800.04 F.S.

⁶ s. 847.0145 F.S.

⁷ s. 775.21 (4) (1)a F.S.

- a. kidnapping, false imprisonment or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent,⁸
- b. sexual battery⁹
- c. procuring a person under the age of 18 for prostitution;¹⁰
- d. lewd or lascivious offenses,¹¹
- e. lewd or lascivious battery or an elderly person,¹²
- f. promoting sexual performance by a child,¹³
- g. selling or buying a minors for child pornography;¹⁴
- h. a violation of a similar law or another jurisdiction such as showing an obscenity to a minor or using a computer to solicit sexual conduct of or with a minor¹⁵

Sexual Offender Designation

The sex offender designation applies to any listed sex offense, regardless of the date the offense was committed, for which an offender is being released on or after October 1, 1997 from the "sanction imposed" for the offense, or, is currently under the care, custody, or control of the Florida Department of Corrections (DOC). "Sanction imposed" includes, but is not limited to, a fine, probation, community control, parole, and conditional release, control release or incarceration.¹⁶ If the subject was released from sanctions before the October 1, 1997 date, the subject is not required to register.

A sexual offender is a person who has been convicted of a sexual offense of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

1. kidnapping, false imprisonment or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent¹⁷
2. sexual battery¹⁸
3. procuring a person under the age of 18 for prostitution¹⁹
4. lewd or lascivious offenses²⁰
5. lewd or lascivious battery on an elderly person;²¹
6. promoting sexual performance by a child²²
7. selling or buying of minors for child pornography;²³
8. selling or showing obscenity to a minor²⁴
9. using a computer to solicit sexual conduct of or with a minor²⁵
10. transmitting child pornography²⁶
- 11 transmitting material harmful to minors;²⁷

⁸s. 787.01 F.S, s.787.02 F.S, s. 787.025 F.S.

⁹ s. 794. 011 F.S.

¹⁰ s. 796.03 F. S.

¹¹ s. 800.04, F.S.

¹² s.825.1025 (2) (b), F.S.

¹³ s. 827.071, F.S.

¹⁴ s. 847.0145, F.S.

¹⁵ Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor {ss. 847.0133, 847.0135, F. S}.

¹⁶Florida Department of Law Enforcement's website, Frequently Asked Questions, #8

¹⁷ s. 787.025 F.S.

¹⁸ s. 794.011, F.S

¹⁹ s 796.03 F.S.

²⁰ s. 800.04 F.S.

²¹ s 825.1025 (2) b), F.S.

²² s. 827.071, F.S.

²³ s. 847.0145 F.S.

²⁴ s. 847.0133 ,F.S

²⁵ s. 837.0135, F.S.

²⁶ s. 847.0137, F.S.

12. violating of a similar law of another jurisdiction.²⁸

Registration Requirements

If an individual is designated as a sexual predator/offender and under the control of the Florida Department of Corrections (DOC), that individual must provide registration information to DOC. DOC will provide such information to the Florida Department of Law Enforcement (FDLE). Additionally, an individual is required to provide the following information: if they are enrolled, employed, or carrying on a vocation at an institution of higher education in Florida. Additionally, any change to information such as name, address, county of each institution, campus attended, enrollment and employment status and each change in enrollment or employment status, including a change in location of either, must be reported within 48 hours.²⁹

If an individual is not under the control or supervision of DOC, then they must initially register in person with the sheriff in the county of their temporary or permanent residence(s). Registration must be within 48 hours after establishing temporary or permanent residence(s). An individual must secure a driver license or Florida identification card from the Department of Highway Safety and Motor Vehicles (DHSMV). Within 48 hours of any change in temporary or permanent address, an individual must report, in person, to DHSMV. They must also report in person to DHSMV to renew their driver license or Florida identification card. They are also required to provide the following information to the sheriff of the county in which the institution is located, if you are enrolled, employed, or carrying on a vocation at an institution of higher education in Florida, along with any change to this information, within 48 hours of such change:

- Name, address, and county of each institution;
- Each campus attended;
- Enrollment and employment status;
- Each change in enrollment or employment status, including a change in location of either.³⁰

Registration Requirements

Sex offenders must initially register in person with either FDLE or the sheriff in the county of temporary or permanent residence. Registration must be within 48 hours after establishing residence. They also must secure a driver license or Florida identification card from the Department of Highway Safety and Motor Vehicles (DHSMV). Within 48 hours of any change in temporary or permanent address, an individual must report, in person, to DHSMV. They must also report in person to DHSMV to renew their driver license or Florida identification card.³¹ A sexual predator's or sexual offender's failure to comply with registration requirement is a third degree felony.³²

Proposed Situation

The bill specifies that sex offenders and sexual predators can not seek shelter in a public hurricane evacuation shelter. It further requires the county to provide for separate shelter space for sex offenders and predators. In order to comply with this change, counties will need to coordinate with the Department of Corrections (DOC) and the Florida Department of Law Enforcement (FDLE) to insure that the county has an accurate list of sexual predators and sexual offenders in their respective counties. This list must be updated regularly to insure that when an emergency arises, exclusive shelter space is made available to the sexual predators and sexual offenders who require shelter.

²⁷ s. 847.0138, F.S.

²⁸ s. 775.21 (4) (1) a F.S.

²⁹ Florida Department of Law Enforcement's website, Frequently Asked Questions, #16

³⁰ *Id.*

³¹ *Id.*

³² s. 775.21 (10) F.S.

Providing exclusive shelter for these individuals could be problematic. Some registered sexual offenders and predators are the main custodians of their children. If sexual predators and sexual offenders are housed in the same location with their children, one offender/predator housed at the shelter may be in violation of their probation or s.775.21 (10) (b) F.S. State law s.775.21 (10) (b) F.S. prevents certain sexual predators from working or volunteering in places where children normally congregate³³. Additionally, some probation/parole conditions prevent a predator/offender from living in the area of schools, playgrounds, etc. If these offenders/predators bring their children to the shelter it may possible violate their probation or other offenders/predators staying at the shelter.

Additionally, a sexual offender/predator might be the main caretaker of an elderly relative or a person with special needs. If the sexual offender/predator is not allowed to accompany these individuals in a public shelter, it might jeopardize their care and well being. In a rapidly deteriorating disaster situation, it might be difficult to arrange for care of such persons if the sexual predator/offender is their main custodian.

Sexual offenders/predators may be reluctant to seek shelter in a shelter space that is designated for sexual offenders/predators only. Individuals in designated shelters would have limited anonymity and could be vulnerable to public scrutiny or abuse. Due to limited shelter space, smaller counties may have difficulty housing these individuals separately

C. SECTION DIRECTORY:

Section 1. Public shelters that house the general public may not be used by a registered sex offender or sexual predator. Each county shall provide for sufficient separate and exclusive shelter space for registered sexual offenders or sexual predators.

Section 2. A sexual predator shall not seek shelter in a public hurricane evacuation shelter but may seek shelter in a hurricane evacuation shelter provided for such predators by the county.

Section 3. A sexual offender shall not seek shelter in a public hurricane evacuation shelter but may seek shelter in a hurricane evacuation shelter provided for such offenders by the county.

Section 4. The Legislature finds that the provisions of this act fulfill an important state interest.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Not applicable
2. Expenditures:
Not applicable

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
2. Expenditures:

³³ Florida Department of Law Enforcement's website, Frequently Asked Questions, #13

Due to limited shelter space, some districts may have to expend funds to build space or contract to utilize suitable shelter space to house the sexual offenders/predators separately. The districts would have to be surveyed in order to know the fiscal impact of this requirement. However, as suitable shelter space is at a premium, some counties may not be able to provide separate and equitable housing exclusively for sexual predators/offenders. Smaller counties could suffer a significant financial burden to accommodate this requirement. The bill does not provide funds for separate shelter space to sexual offenders/predators in each county.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not applicable

D. FISCAL COMMENTS:

The requirement of separate shelter space for sexual offenders/predators may place a burden on counties struggling with limited shelter space. The bill does not appropriate funds to provide separate shelter space to sexual offenders/predators in each county.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This shelter requirement may require cities to expend funds and establish rules to provide separate shelter space for sexual predators/offenders.

2. Other:

State statutes restricting the residency of sex offenders are of recent origin and therefore there are a limited number of reported decisions on their constitutionality at this time. Those reviewed relate to prohibiting sex offenders from residing within an established distance from a school or child care facility. Such statutes have been upheld against challenges for substantive due process, right to travel, a fundamental right "to live where you want", liberty issues, taking, and over breadth.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Domestic Security Committee adopted a strike all amendment that requires the Division of Emergency management to set forth policy guidance for the sheltering of individuals subject to registration as a sexual offender under s. 943.0435 F.S. or designated as a sexual predator under s. 775.21 F.S. Individuals subject to registration as a sexual offender/predator are required to adhere to the adopted guidelines and provisions of the state or local law enforcement adopted under s. 252.35 (2) (a) 2. The bill was reported favorably with committee substitute.